

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

D'ANNUNZIO ROMAN GAVIOLA  
PATRON,

Plaintiff,

v.

LEWY HUGH, et al.,

Defendants.

No. 1:24-cv-00655-JLT-SAB (PC)

ORDER DISCHARGING ORDER TO SHOW  
CAUSE, DENYING PLAINTIFF'S MOTION  
FOR EXTENSION OF TIME AND REQUEST  
FOR SUBPOENA AS MOOT, AND  
GRANTING PLAINTIFF'S MOTION TO  
AMEND TO SUBSTITUTE NAMED  
DEFENDANT LEWY HUGH

(ECF Nos. 23, 28, 29, 30)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

On July 24, 2024, the Court ordered service of the first amended complaint on Defendants registered nurse Lewy Hugh, officer C. Mares, and officer G. Herara, at the Fresno County Jail. (ECF No. 14.)

On November 20, 2024, the Court ordered Plaintiff to show cause why Lewy Hugh should not be dismissed pursuant to Rule 4(m), because the staff manager for Wellpath indicated that they do not have an employee by the name of Lewy Hugh, and the United States Marshal has not been successful in locating this Defendant. (ECF No. 23.)

On December 11, 2024, Plaintiff filed a motion for an extension of time to respond to the order to show cause, and a separate request for a subpoena duces tecum. (ECF Nos. 28, 29.)

On December 13, 2024, Plaintiff filed a motion to amend the complaint to substitute nurse Lilian H. in place of nurse Lewy Hugh. (ECF No. 30.) Inasmuch as Plaintiff indicates that he

1 recently discovered that the proper identity of the nurse is Lilian H., and not Lewy Hugh, the  
2 Court will grant Plaintiff's motion for substitution and direct service of process by the United  
3 States Marshal on Defendant nurse Lilian H. Consequently, Plaintiff's motion for an extension of  
4 time and request for subpoena duces tecum as to the identity of the Defendant nurse are rendered  
5 moot and shall be denied.<sup>1</sup>

6 Based on the foregoing, it is HEREBY ORDERED that:

- 7 1. The Court's order to show cause (ECF No. 23) is DISCHARGED;
- 8 2. Plaintiff's motion to substitute Defendant nurse Lilian H. in place of Defendant  
Lewy Hugh is GRANTED;
- 9 3. Plaintiff's motion for an extension of time and request for subpoena duces tecum  
are DENIED as MOOT; and
- 10 4. The Clerk of the Court is directed to fill out and forward the following documents  
to the United States Marshals Service:
  - 11 (1) One completed and issued summons;
  - 12 (2) **One completed USM-285 form as to Defendant nurse Lilian H, Wellpath, 855  
M. Street, Suite No. 190/P.O. Box 872, Fresno, CA. 93712;**
  - 13 (3) One copy of the first amended complaint filed on June 21, 2024 (ECF No. 8), plus  
an extra copy for the Marshals Service;
  - 14 (4) One copy of this order, plus an extra copy for the Marshals Service; and
- 15 5. Within ten days from the date of this order, the Marshals Service is directed to notify  
the following defendants of the commencement of this action and to request a waiver of  
service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c):  
**Lilian H.**
- 16 6. The Marshals Service shall file returned waivers of service as well as any requests  
for waivers of service that are returned as undelivered as soon as they are received.
- 17 7. If a waiver of service is not returned by a defendant within sixty days of the date of

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28 <sup>1</sup> To the extent Plaintiff seeks other documents relating to the merits of his underlying claims, Plaintiff is advised that  
discovery is not yet open

1 mailing the request for waiver, the Marshals Service shall:

2       a. Personally serve process and a copy of this order upon the defendant pursuant to  
3           Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c), and shall  
4           command all necessary assistance from the Fresno County Jail to execute this order.  
5           The Marshals Service shall maintain the confidentiality of all information provided by  
6           the Fresno County Jail pursuant to this order. In executing this order, the Marshals  
7           Service shall contact the Legal Affairs Division of the Fresno County Jail and request  
8           the assistance of a Special Investigator if the Litigation Officer at the institution is  
9           unable to assist in identifying and/or locating defendants.

10      b. Within ten days after personal service is effected, the Marshals Service shall file the  
11           return of service for the defendant, along with evidence of any attempts to secure a  
12           waiver of service of process and of the costs subsequently incurred in effecting service  
13           on said defendant. Said costs shall be enumerated on the USM-285 form and shall  
14           include the costs incurred by the Marshals Service for photocopying additional copies  
15           of the summons and complaint and for preparing new USM-285 forms, if required.  
16           Costs of service will be taxed against the personally served defendant in accordance  
17           with the provisions of Fed. R. Civ. P. 4(d)(2).

18      8. If defendant waives service, they are required to return the signed waivers to the  
19           Marshals Service. The filing of an answer or a responsive motion does not relieve  
20           defendants of this requirement, and the failure to return the signed waivers may subject  
21           defendants to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).

22  
23 IT IS SO ORDERED.

24 Dated: December 17, 2024



25 STANLEY A. BOONE  
26 United States Magistrate Judge